IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.4650 OF 1992

Shri Manohar Laxman Kulkarni,
age about 57 years, Occupation
Agriculture, residing at Kasegaon, ...Petitioner
Taluka Walawa, Dist.Sangli. (Ori.Applicant)

Versus

1. Smt.Padmavati Laxman Kulkarni,
since deceased through her legal
heirs and representatives:

(a) Shri Damodhar Ramchandra Garde,
Husband of Respondent No.3
(since deceased)
residing at Flat No.11, 3rd Floor,
"Amrapali", Plot No.75,
Off.Relief Road, Santacruz (W),
Bombay - 400 054.

(b) Mr.Amit Damodar Garde,
son of the Respondent No.3,
(since deceased), residing at
Flat No.11, 3rd Floor, 'Amrapali',
Plot No.5, Opp.Relief Road,
Santacruz (West), Bombay 400 054.

(c) Mrs.Aparna Saumil Shah,
Daughter of the Respondent No.3
(since deceased) residing at 62
'Summer Ville', Bhulabai Desai Road,
Mahalaxmi, Mumbai-400 026.

(d) Mrs.Archana Subhas Dhardher,
Daughter of the Respondent No.3
(since deceased) residing at
'Ashirvad" 3rd floor, Plot No.335,
12th Road, Khar, Bombay-400 052.

2. Shri Gangadhar Laxman Kulkarni,
Residing at Kasegaon, Taluka Walawa,
District : Sangli.

3. Sou.Kalindi Damodar Garde,
since deceased through her
legal heirs :

1.Shri Damodhar Ramchandra Garde,
Husband of Respondent No.3
(Since deceased), residing at
Flat No.11, 3rd floor,
"Amrapali", Plot No.75,
Off.Relief Road, Santacruz (W),
Bombay - 400 054.

2.Mr.Amit Damodar Garde,
son of the Respondent No.3,
(since deceased), residing at
Flat No.11, 3rd Floor,
'Amrapali', Plot No.75,
Opp.Relief Road, Santacruz (West),
Bombay - 400 054.

3.Mrs.Aparna Saumil Shah,
Daughter of the Respondent No.3,
(since deceased) residing at 62,
'Summer Ville', Bhulabai Desai Road,
Mahalaxmi, Mumbai - 400 026.

4.Mrs.Archana Suhas Dhardher,
Daughter of the Respondent No.3,
(since deceased) residing at
'Ashirvad', 3rd Floor, Plot No.335,
12th Road, Khar, Bombay - 400 052.

4. Shri Dattatraya Laxman Kulkarni,
age about 59 years, Occupation retired
from service, residing at 2,
Mangalwar Peth, Shevadewada,
A & P Satara, District Satara.

5. Sub-Divisional Officer,
Walwa Division, Sangli.

6. Addl.Collector & Resident
Dy.Collector, Sangli.

7. Addl.Commissioner, Pune Division, ...Respondents

PUNE. (Org.Opponents)

.....

Mr.S.M.Oak for Petitioner.

Mrs.Deepa Chavan i/b Mr.A.S.Gadkari for
Respondents 1(a) to 1(d) & 3(1) to 3(4).

Mr.Uday Warunjikar for Respondent No.4.

AND

FIRST APPEAL NO.555 OF 2005

Smt.Kalindi Damodar Garde,
Age 59 years, Occupation - Business,
Residing at Kasegaon, Tal.Walwa,
Dist.Sangli, since deceased through
her legal heirs :

A) Shri Damodhar Ramchandra Garde,
Age 74 years, Occupation - Retired,

B) Mr.Amit Damodar Garde,
Age 32 years, Occupation - Service,

Both residing at
11, Amrapali, 3rd Floor,
Prabhu Sakhar Sahakari Gruha Nirman
Society Ltd., Relief Road,
Doulatnagar, Santacruz (West),
Mumbai - 400 054.

C) Sou.Archana Suhas Dharadhar,
Age 33 years, Occupation - Service,
Residing at Ashirwad, 3rd Floor,
Flat No.335, 12th Road,
Mumbai - 400 052.

D) Sou.Aparna Somil Shah,
Age 35 years, Occupation-Household,
Residing at 62, Semerwheel,
Bhulabhai Desai Road, Mahalaxmi,
Mumbai - 400 026.

E) Shri.Bharatkumar Natwarlal Goradiya, ’
Residing at 262-B, Pranamdhar,
2nd Floor, K.C.Malaviya Road,
Vile Parle (East), Mumbai-400 57.

F) Shri.Anand Dattakumar Dharadhar,
Residing at Ashirwad, 3rd Floor,
Plot No.335, 12th Road, ...Appellants
Khar (West), Mumbai - 400 052. (Ori.Deft.No.1)

Versus

1. Shri Dattatraya Laxman Kulkarni,
Age 74 years, Occu - Retired
& Agri., Residing at Geet-Govind
Apartment, Guruwar Peth,
Satara.

2. Shri.Manohar Laxman Kulkarni,
Age 65 years, Occu. - Agri.,
Residing at Kasegaon, Tal.Walwa,
Dist.Sangli.

3. Smt.Mangala Gangadhar Kulkarni,
Age 60 years, Occu. - Agri.,
Residing at 220, Somwar Peth,
Karad, Tal.Karad, Dist.Satara.

4. Sou.Anagha Abhay Latkar,
Age 38 years, Occu. - Agri.,
Residing at 220, Somwar Peth,
Karad, Tal.Karad, Dist.Satara.

5. Shri.Pandurang Yeshwant Aundhakar,
Age 48 years, Occu.-Agri.,

6. Shri Ashok Sahadev Shelke,
Age 48 years, Occu. - Agri.,

7. Shri.Dattatraya Shamrao Shelke,
Age 48 years, Occu. - Agri.,

8. Shri.Manik Maruti Mali,
Age 48 years, Occu. - Agri.,

9. Shri.Bhimrao Ramchandra Todkar,
Age 48 years, occu. - Agri.,

10.Shri.Janardan Maruti Mali,
Age 48 years, Occu. - Agri.,

11.Shri.Mahadev Maruti Mali,
Age 48 years, Occu. - Agri.,

12.Shri.Maruti Pandurang Shingare,
Age 48 years, Occu. - Agri.,
Respondents No.5 to 12,
residing at Kasegaon, Tal.Walwa, ...Respondents
Dist.Sangli. (2 to 12-Ori.Defts.)

.....

Mrs.Deepa Chavan i/b Mr.A.S.Gadkari for Appellants.

Mr.Uday Warunjikar for Respondent No.1.

Mr.S.M.Oak for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

DECEMBER 11, 2006.

ORAL JUDGMENT :

1. This Judgment will dispose of both these proceedings being Writ Petition No.4650 of 1992 and First Appeal No.555 of 2005. Both these proceedings are between the same parties and raise common question of law.

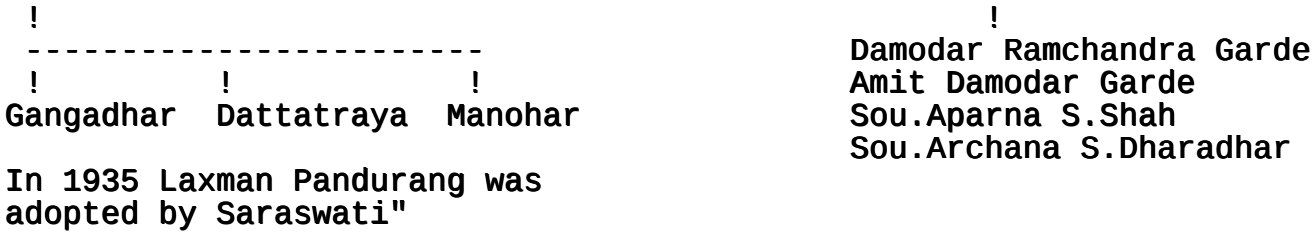
2. The Writ Petition takes exception to the

order passed by the Revenue Authorities excluding the names of the sons of Laxman on the ground that they have no right, title or interest in relation to the suit property as they were born prior to the date of adoption of Laxman. On the other hand, the First Appeal arises from the Suit filed by one of the sons of Laxman-born prior to the date of adoption of Laxman-for partition, separate possession and mesne profits as also relief of injunction against the Defendants. The main contest in this Suit was between the sons of Laxman born prior to the date of his adoption and the daughter of Laxman born after the date of adoption.

3. The genealogy of the family in which Laxman was given in adoption in 1935 is as follows:

"Narayan @ Naropant Raghunathpant Kulkarni

Ramchandra Narayan	Laxman Narayan	Govind Narayan	Ganesh Narayan	**Saraswati Ganesh**	Hari Narayan
Adopted Pandurang Ramchandra		Vishnu	Pandurang Adopted by Ramchandra	**Laxman adopted in 1935 After adoption Kalindi Laxman born in 1938 After marriage Kalindi Garde (dead)**	
Laxman	Raghunath	Kashinath			



4. Laxman was given in adoption to Saraswati on 2nd November 1935. At the relevant time, he had three sons Gangadhar, Dattatraya and Manohar aged 4 years five months, two years five months and nine months respectively. After the adoption by Saraswati, Laxman and his wife Padmavati joined the family of Saraswati along with their three sons. In 1938, daughter Kalindi was born to Laxman and Padmavati. The natural father of Laxman, Pandurang, effected partition in respect of the joint family property owned and possessed by him, on 30th December 1948. In the said Partition, claim of Laxman was excluded as he had gone in adoption to Saraswati.

5. On 10th May 1962, Pandurang the natural father of Laxman executed the will which confirms the position of partition. On 10th January 1987,

Laxman died. It is admitted position that Saraswati predeceased Laxman. After the death of Saraswati, Laxman inherited the property of Saraswati-which property is subject matter of the present proceedings. Soon after the death of Laxman, daughter Kalindi applied to the Revenue Authority for effecting the change in the village records for inclusion of the names of her mother-Padmavati and self as owners with regard to the suit property. Surprisingly, on the following day of the application, the Revenue Authority effected mutation entry No.4702, on 11th March 1987. This mutation entry was challenged by Manohar by way of appeal. The Appeal was partly allowed on 16th March 1989. The Appellate Authority directed the first Revenue Authority to undertake fresh enquiry. This decision, however, was challenged by Kalindi by way of appeal. The said Appeal was partly allowed. The Appellate Authority took the view that the enquiry to be undertaken by the first Revenue Authority should be limited to the factum of possession. Against this decision, two separate Revisions came to be filed. One Revision was filed by Kalindi, who wanted

restoration of the order passed by the first Revenue Authority and set-aside the order passed by the Appellate Authority directing fresh enquiry into the matter. The second Revision Application was filed by Manohar against the view taken by the Appellate Authority that the first Revenue Authority will undertake limited enquiry. Both these Revision Applications came to be disposed of on 14th February 1992 by the revisional authority. Revision filed by Manohar came to be dismissed. Whereas, Revision filed by Kalindi was allowed. Resultantly, mutation entry No.4702 effected by the first Revenue Authority came to be restored. Against this decision, Manohar preferred second Revision Application before the State Government. The said Revision Application, however, came to be dismissed on 8th September 1992. Against that decision, above said Writ Petition has been filed by Manohar.

6. In the interregnum, widow of Laxman i.e. Padmavati died on 10th October 1992, leaving behind a registered Will dated 31st May 1987 whereunder she gave the property which had come to her share

to her three sons who were born prior to the date of adoption of Laxman (her husband). That on 20th October 1996, Gangadhar, one of the sons of Laxman and Padmavati, died. It is stated that Kalindi and Manohar took forcible possession of the suit flat. On that assertion, Dattatraya, the second son of Laxman and Padmavati, filed suit in the Court of Civil Judge, Senior Division, Islampur being

Special Civil Suit No.538 of 1996 which has been later on renumbered as 16 of 2001.

7. As mentioned earlier, relief claimed in the suit filed by Dattatraya is for partition, separate possession, mesne profits and injunction. In this Suit, Defendants 5 to 12 came to be impleaded on the assertion that Manohar-Defendant No.2 has created third party rights in the suit property in their favour without any authority.

8. While the said suit was pending before the Trial Court, the Writ Petition filed by Manohar which was pending before this Court against the order of revenue authorities, came up for hearing.

At the hearing of the said Writ Petition, however, none appeared for Kalindi. This Court proceeded with the hearing of the said Writ Petition on the assumption that all the heirs of the deceased Respondent were on record and represented before this Court. Two questions were essentially addressed while deciding the said Writ Petition. The first question was as to the scope of enquiry for the purpose of Section 148 of the Maharashtra Land Revenue Code. The second question was purely question of law; and if that question was to be answered in favour of the sons of Laxman born prior to the date of adoption of Laxman, they were required to be considered as the owners of the suit property along with Kalindi - the daughter of Laxman. In that case, their names were required to be entered in the Revenue records along with the name of Kalindi. The question of law was answered in favour of Manohar and against Kalindi essentially relying on two reported decisions namely; in the case of **Kausalyabai W/O Jagdeorao v. Devkabai W/O Jaiwantrao Deshmukh reported in 1978 Mh.L.J. 357**-decision of Division Bench of this Court and the second decision of the Karnataka

High Court again of Division Bench in the case of **Smt.Neelawwa v. Smt.Shivawwa reported in AIR 1989 Kant.45.** The Writ Petition preferred by Manohar was allowed on that basis by Judgment and Order of this Court dated 11th October 2002 as reported in **(2003) 3 Mh.L.J. 951-Manohar Laxman Kulkarni v. Padmavathi w/o Laxman Ganesh Kulkarni.** However, after the said decision, Kalindi applied before this Court for review of the order in Writ Petition, inter alia, on the ground that hearing of the Writ Petition could not have proceeded, as Respondent Nos.1 and 3 in the Writ Petition were already dead at the relevant time. It was thus contended that the proceedings were defective at the relevant time; for which reason, the decision passed by this Court was required to be recalled. The said contention was accepted and this Court by order dated 2nd September 2003 recalled the Judgement and Order dated 11th October 2002 passed in the said Writ Petition. In addition, this Court allowed the Writ Petitioner to amend the cause title so as to bring on record all the heirs and legal representatives of the deceased Respondents.

9. While the said restored Writ Petition was pending final hearing, the Suit filed by Dattatraya came to be disposed of by the Civil Judge, Senior Division, Islampur by Judgment and decree dated 13th November 2004. In the said Suit, on the basis of pleadings of the parties, the Trial Court framed as many as 13 issues. The Trial Court answered the material issues in favour of the Plaintiff Dattatraya and against Kalindi. The main contest of the parties was whether the three sons of Laxman born before adoption in 1935, namely, Gangadhar, Dattatraya and Manohar, were entitled to inherit the property left behind by Laxman after his death. According to Kalindi, as the three sons were born to Laxman prior to the date of his adoption i.e. before 2nd November 1935, they had no right, title or interest in the properties left behind by Laxman and it is Kalindi, being the sole daughter born to Laxman after his adoption, would inherit the same along with Padmavati, her mother. In the Suit filed by Dattatraya, the other issues were whether Kalindi was in exclusive possession of the suit property as claimed by her and whether the Plaintiff proved that Padmavati has executed will

dated 21st May 1987? However, in the present proceedings, the said issues are not relevant, as this Court is called upon to consider the sole controversy as to whether the sons born to Laxman prior to the date of his adoption were entitled to succeed to the property of Laxman after his death. It is therefore not necessary to burden this Judgment with the other issues considered by the Trial Court in the Suit filed by Dattatraya.

10. As mentioned earlier, the Suit came to be decreed in favour of Dattatraya on 30th November 2004. Against the said decision, Kalindi filed First Appeal in this Court in 2005 being First Appeal No.555 of 2005. As the restored Writ Petition was pending in this Court, it was thought appropriate to hear and decide the Writ Petition and the First Appeal together, as common questions were raised in both these proceedings. Accordingly, the Writ Petition as well as the First Appeal have been heard together and are being decided by this common Judgment.

11. As mentioned earlier, the only question

that has been canvassed before this Court in the present proceedings is about the eligibility and entitlement of the three sons of Laxman born to him prior to the date of adoption, to inherit the property of Laxman in his adoptive family after his death. The facts referred to above are not in dispute at all. The Trial Court has answered the question in favour of the sons of Laxman essentially relying on two decisions. Firstly, reported in **Mh.L.J.1972 Notes of Cases Page 1 in the case of Dundyappa Laxman Karol v. Neelavva Chandrappa Jarali** and the other decision of the Karnataka High Court in the case of **Neelawwa (supra)**. Besides these two decisions, reliance was placed on other reported decisions referred to in the Judgment under Appeal such as **AIR 1966 SC 1879 in the case of Eramma vs. Veerupanna & Ors., AIR 1979 Bom.176 in the case of Daddo Atmaram Patil & Ors. v. Raghunath Atmaram Patil & Ors., Kausalyabai (supra), Bombay Law Reporter 1939 page 845 equivalent as AIR 1939 Bom.305 Full Bench decision in the case of Martand Jiwaji Patil & Anr. vs. Narayan Krishna Gumast-Patil & Ors.** and lastly, **1909 (XI) BLR 797 in the case of Kalgauda**

Tavanappa Patil v. Somappa Tammangauda Patil. The Trial Court on the relevant question has essentially found that the succession to the property in the adoptive family of Laxman would open up only after the death of Laxman on 10th January 1987; and the Plaintiff and other two sons would inherit the same along with their sister and mother, though they were born prior to the date of adoption of their father Laxman. This is the core controversy that arises for my consideration in the present matters.

12. Counsel for Kalindi has pressed into service reported decisions to buttress the contention that the sons born to Laxman prior to the date of his adoption cannot stake any claim to the property left behind by Laxman in his adoptive family. Reliance is placed on the decision of the Division Bench in the case of **Kalgauda Tavanappa Patil (supra)**. The principle stated in this decision, contends learned Counsel, has been reiterated by the Full Bench of our High Court in the case of **Martand Jiwaji Patil (supra)** and in the case of **Tarabai Bhimgonda Patil & Ors. v.**

Babgonda Bhau Patil & Ors. reported in AIR 1981 Bom.13. Reliance is also placed on the decision of Full Bench of the Nagpur High Court in the case of **Sharadchandra alias Ambadas s/o Krishnarao Deshpande v. Shantabai w/o Sadashiorao & Anr. reported in AIR 1944 Nagpur 266**, which decision, it is contended, has dissented from the view expressed by the Full Bench of our High Court in the case of **Martand Jiwaji Patil (supra)**. Lastly, reliance is placed on the decision of the Supreme Court in the case of **Daniraji Vrajlalji, Junagadh v. Maharaj Shri Chandraprabha reported in AIR 1975 SC 784**. This decision deals with the provision of the Hindu Adoptions and Maintenance Act 1956. However, the same is pressed into service as the provisions of Section 4 of the said Act are parimateria Section 4 of the Hindu Succession Act, 1956. In that case, the Court has taken the view that the provisions of the Adoption Act does not affect the validity of the adoption made prior to coming into force of the Adoption Act.

13. On the other hand, Counsel for the Respondents (sons) have relied on three decisions

to support their contention that after the coming into force of the Hindu Succession Act, the legal position will have to be reckoned on the basis of the Scheme of the Hindu Succession Act. If so understood, contends Counsel for the Respondents, no fault can be found with the ultimate decision of the Trial Court, which has taken the view that the sons, even if born prior to the date of adoption of Laxman, will be entitled to inherit the property in the adoptive family left behind by Laxman after his death. To buttress this contention, reliance is essentially placed on the decision in the case of **Kalgauda Tavanappa Patil (supra), Kausalyabai (supra), and Neelawwa (supra)**. Besides these three decisions, reliance is placed on the exposition in the case of **Amarendra Man Singh Bhramarbar & Anr. v. Sanatan Singh & Ors. reported in AIR 1933 Privy Council 155**, which has been quoted with approval by the Apex Court in the case of **V.T.S.Chandrasekhara Mudaliar (since deceased) & after him his legal representatives & Ors. v. Kulandaivelu Mudaliar & Ors. reported in AIR 1963 SC 185.** Reliance is also placed on the decision of our High Court in the case of **Daddo Atmaram Patil**

(supra).

14. Having considered the rival submissions, I shall straightaway advert to the exposition in the decisions pressed into service on behalf of Kalindi (Appellants). The first decision on the point is the case of **Kalgauda Tavanappa Patil (supra)**. The Division Bench in this case was called upon to consider the following question :

> "When a married Hindu, having a son is given in adoption by his natural father, does the Hindu's son also, like his father, lose the gotra and rights of inheritance in the family of his birth and acquire the gotra and a right of succession to the property of the family into which the Hindu is adopted."
>
> (emphasis supplied)

. In the first place, it was a converse situation where the relations in the family of birth asserted that the sons born to the Hindu before the date of his adoption, would lose their right of inheritance in the family of his birth along with the Hindu. That is the first part of the question as formulated by the Court in the said case. In fact, the second part of the question presupposes that the sons born to the Hindu before

the date of his adoption would acquire the gotra and a right of succession to the property of the family into which the Hindu is adopted. Be that as it may, the observations in this decision, which statement of law, cannot be doubted, can be kept in mind while considering the present matters. At page 811, the Court went on to observe as follows:

> "The obligation and the line represented by the grandson must continue unless it is extinguished altogether in the mode or modes prescribed by the Shastras, that is, by death or excommunication or by the giving of the grandson himself in adoption by his father. No where do the Shastras say that they are extinguished by the mere fact of the father having been given in adoption."

. At page 812, it is observed as follows:

> "So far, then, as the texts and commentaries bearing directly on the question of adoption are concerned, they do not support the case for the respondent. They deal merely with the personal status of the man or boy given in adoption; and <u>do not purport to affect the status of his son, begotten before adoption</u>. But it is agreed that when a married man is given in adoption, his wife passes with him into the adoptive family-she, like him, acquire the new gotra; <u>that what applies to the wife of the man adopted must apply to his son</u>

> also, begotten before the adoption, because, both according to the Smriti writers and their commentators, a man's wife and sons go together."
>
> (emphasis supplied)

. Indeed, the Court went on to observe that the theory of identity between father and his son recognised by Shastras does not mean that they are one body as husband and wife are. It means that they are to some extent, co-equals. At page 815 of the report, the Court went on to observe thus:

> "But the text does not say that the son of that man, born before his adoption, ceases to be his son and loses the right to offer funeral oblations to his soul, in case of his death. For one thing, according to the Hindu Shastras, "by no means can you make your father cease to be". The mere fact that the father has gone into another family by adoption and ceased to be of his son's gotra or family, cannot unmake what he naturally is-the son's father."
>
> (emphasis supplied)

. The Court then went on to observe that the gotras of the two will differ in consequence of the adoption; but it is not always necessary for funeral ceremonies that the person performing them should be of the same gotra as the deceased. It

then concluded that a son begotten before the adoption of his father would be entitled to perform the latter's funeral ceremonies. The Court then went on to note the submission canvassed before it that the son must also be entitled to the father's property in his adoptive family. Indeed, this submission has been dispelled by the Court by observing that it is a non sequiter for the issue it was considering. The Court then went to observe that according to Apararka, a son must perform the funeral ceremonies of his father even when the father has left no property for the son to inherit. The Court has then referred to the Manu's text which expound that the funeral oblation follows the inheritance, not the inheritance the funeral oblation. In Nilakantha's Vyavahra Mayukha, it is mentioned that funeral rites of the deceased, as far as the 10th day inclusive, should be performed by whoever takes his wealth, including the king himself. Reference is then made to statement of Vishnu who says the same in following words:

> "He who takes the wealth is declared to be the giver of the pinda or funeral oblations."

. These observations make it more than clear that the exposition in the reported decision is in the context of the issue considered by the Court as to whether the son of a married Hindu given in adoption by his father would, like his father, lose the rights of inheritance "in the family of his birth". That issue is answered in the negative, which means that the son would be entitled to rights of inheritance in the family of his birth. In the present case, however, we are concerned with a converse claim that the son of a married Hindu given in adoption is or is not entitled to the rights of inheritance in the family into which the Hindu is adopted. Suffice it to note that this decision is not a direct authority on that point.

15. The next decision pressed into service on behalf of Kalindi (Appellants) is that of Full Bench of our High Court in the case of **Martand Jiwaji Patil (supra)**. In this case, the only issue considered by the Full Bench was: whether the adoption of Defendant No.1 was valid, as he was

given in adoption of his genitive father after he himself (the genitive father) had gone in adoption. In the context of this question, the Court went on to consider the relationship that exists between the father and the son, adoption of the father not-withstanding. Relying on the observations at page 306, it was contended that the sons born to a Hindu before his adoption will have no claim with regard to the property of the Hindu in his adoptive family because it is said that the sons would remain in the natural family and do not go with him to the adoptive family. That statement of law is found in **Kalgauda Tavanappa Patil's case (supra)** which is referred to by the Full Bench. However, the Full Bench went on to consider whether by virtue of adoption, the Hindu ceases to be the natural father of his children. The Court has further examined as to whether such Hindu would lose his right to give in adoption one of his sons whom he has thus left behind in his natural family. The issue has been answered in the affirmative by the Full Bench on the reasoning that the paternity of the father cannot be shaken off even though he may leave the family as, according to the Hindu

Shastras: "By no means can you make your father cease to be." The Court at pages 308 and 309 has adverted to the observations in **Kalgauda Tavanappa Patil's case (supra)** that the mere fact that the father has gone into another family by adoption and ceased to be his son's gotra or family cannot unmake what he naturally is - the son's father. Reference is made to another observation in the same decision that the son begotten by an adopted Hindu before adoption, has vested rights in the ancestral property of the family of his birth. Rights of property once vested cannot be taken away except in the mode or modes prescribed by the Hindu law. They cease either by death, sale, gift, degradation, disqualification or by adoption. Reference is also made to another observation in that decision to the effect that oblation and the line represented by the grandson must continue unless it is extinguished altogether in the mode or modes prescribed by the Shastras, that is, by death or excommunication or by the giving of the grandson himself in adoption by his father. The Court at page 308 of this reported decision has went on to observe that in the absence of any express text or

judicial decision depriving an adopted son of his right to give away in adoption his son born before his adoption, no useful purpose would be served by imposing such a restriction upon him. It has then observed that the modern trend of decisions is to take a more liberal view and to interpret the texts from a practical point of view as far as possible. Suffice it to observe that even this decision will be of no avail to Kalindi (Appellants) to substantiate the legal question that arises for consideration before this Court. On the other hand, the observations in this decision would leave no doubt that the established legal position is that inspite of adoption of a Hindu, the relation between him and his natural son born before the date of adoption, does not cease to be and he still remains the son’s father.

16. Much emphasis was placed on the decision in the case of **Sharadchandra (supra)** another Full Bench Judgment, but of Nagpur High Court. It was argued that the exposition of the Full Bench of this Court in the case of **Martand Jiwaji Patil (supra)** has been dissented to by the Nagpur Full

Bench. Let us therefore examine whether the decision of Nagpur Full Bench will be of any avail

to Kalindi (Appellants). Reference was made to the Full Bench to answer two questions namely:

> " (1) After a married man has been adopted and he and his wife have gone into the new family and their natural son remains in the old family, do the natural parents retain their right to give that son in adoption?
>
> (2) If so, can the mother adopt that son to her husband after his death, empowered in one capacity to give and in another to take?"

. In the first place, this Judgment is not directly on the point that we are called upon to consider in this case. Besides, my reading of this Judgment is that the Nagpur Bench has answered the

reference by holding that the mother could not have acted in two capacities as giver as well as taker in adoption. It went on to observe that insofar as the son was concerned, there was no one in the natural family to give. In such a case, the question of taking cannot arise. Strong reliance was placed on the observations made in this decision to the effect that on adoption, all jural connection with the natural family ceases and the adopted son becomes in all respects, except those specified, a member of the adoptive family, jut as if he would have been born into it. Indeed, in this Judgment, the Nagpur Bench has observed that blood relationship theory cannot be sustained. However, the question as to whether the son born before the date of adoption can inherit property left behind by his father in the adoptive family was not in issue in this decision. To put it differently, this decision cannot be pressed into service to answer the said legal position.

17. The next decision relied on behalf of Kalindi (Appellants), if I may say so, can be said to be nearest in point. But even this decision

will be of no avail to Kalindi (Appellants) for the reasons that I would indicate a little later. In the case of **Tarabai Bhimgonda Patil (supra)**, the first argument that was considered was regarding a finding recorded by the lower Court on the basis of certificated entry of the birth register produced at Exhibit 172, inspite of the fact that it was shown by the Plaintiff that there was good reason to doubt its genuineness. The Plaintiff in that case, prayed that the Defendant had no right in the property left behind by Kausabai Bhau, as he was born before the adoption of Bhau, for which reason, he was entitled to inherit the property left behind by Bhau in his adoptive family. The controversy therefore rested on the facts of that case. The Court, in the first place, concluded that the Defendant No.1 was born after the date of adoption of Bhau. It is not a case where the Court has found that the son was born prior to the date of adoption of his father, for which reason, he was not entitled to inherit the property left behind by his father in his adoptive family. The Plaintiff had assumed that such a right did not exist if the son was born prior to the date of adoption of his

father. On analysis of evidence in that case, it was held that the son was born after the date of adoption of his father. On that finding, it was not necessary for this Court to consider the correctness of the assumption of the Plaintiff on which the Suit was maintained. It would have been a different matter if the Court were to record finding of fact that the son was born prior to the date of adoption of the Hindu and thereafter proceed to hold that on that account the son was not entitled or eligible to inherit the property left behind by his father in his adoptive family. Thus understood, the ratio of the decision is simply that the son having born to the Hindu after the date of his adoption was in any case, entitled to inherit the property left behind by the Hindu in his adoptive family. Emphasis was placed on the observation in Para 7 of this decision which reads thus :

> "..... This applies to juridical as well as natural effects, including the status of the pre-born and post-born offsprings, the former remaining in the earlier family while the latter being born in the adoptive family."

. This observation does not take the matter any further for Kalindi (Appellants). There is additional significant reason to hold that this decision is of no avail to Kalindi (Appellants). This decision makes no reference to any of the provisions and the efficacy of the enactment of Hindu Succession Act. In fact, none of the decisions cited across the bar by the Counsel appearing for Kalindi (Appellants) have direct application to the question that arises for consideration in the present case.

18. Counsel for Kalindi (Appellants) had then relied on the decision of **Daniraji Vrajlalji (supra)** which decision deals with the effect of the provisions of the Adoption Act. Indeed, Section 4 of both the Adoption Act as well as Hindu Succession Act are parimateria. Even so, this decision will be of no avail to the Appellants. Relying on this decision, it was contended that the custom in relation to the adoption, having taken place prior to the coming into force of this Act, will not be affected in any manner. This submission was on the premiss that the prevailing

custom at the relevant time was that the son of a Hindu gone into adoption will not be entitled to inherit the property left behind by his father in his adoptive family. However, no foundation is laid to pursue such plea. There is also no evidence on record to support this position; that such a custom was prevailing at the relevant time and that the parties were governed by such custom. Besides, the decision of the Apex Court in the case of **Daniraji Vrajlalji (supra)** will be of no avail as the Scheme of provisions of Adoption Act and the Hindu Succession Act are dissimilar. I say so not with regard to Section 4, but because there is no provision such as Section 15 or Section 30 of the Adoption Act in the Act with which we are concerned, namely, Hindu Succession Act. The decision of the Apex Court will have therefore to be understood in the context of the provisions of the Adoption Act and the observations therein will be of no avail to the present case, which is governed by the provisions of the Hindu Succession Act.

19. We shall now straightaway turn to the scheme of the Hindu Succession Act to consider

whether the claim putforth by Kalindi (Appellants) that she alone could have inherited the property left behind by Laxman in his adoptive family, can be accepted. Indubitably, Hindu Succession Act, 1956 came into force with effect from 17th June 1956. At the relevant time, Laxman was alive. It is also not in dispute that Laxman died intestate on 10th January 1987. It is only after the death of Laxman, succession to the property left behind by him in his adoptive family would open up. The question is: who is entitled to inherit the said property? Going by Section 6 read with Section 8 of the Act, as it stood before the recent amendment in 2005, which provisions will have application to the case in hand, read with the definition of "heir" in Section 3(f) and "related" in Section 3(j) as also Section 3(e) which defines expression "full blood" "half blood" and "uterine blood", there can be no doubt that the sons, daughters and widow of the male would inherit the property left behind by a Hindu in his adoptive family.

20. Section 3(f) postulates that expression "heir" means any person, male or female, who is

entitled to succeed to the property of an intestate under this Act. Section 3(j) stipulates that "related" means related by legitimate kinship. In the present case, we are not concerned with the proviso to Section 3(j) which deals with the case of illegitimate children. Before we move on to the main provisions, it may be apposite to refer to the definition of expression "full blood", "half blood" and "uterine blood" as occurring in Section 3(e), which reads thus :-

> "3(e) "full blood", "half blood" and "uterine blood"-
>
> (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives;
>
> (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;
>
> *Explanation*.-In this clause "ancestor" includes the father and "ancestress" the mother."

. Section 3(e)(i) clearly provides that the two persons are said to be related to each other by full blood when they are "descended from a common

ancestor by the same wife". When this provision is juxtaposed with the other provisions of the Act such as definition of "heir" and "related" and the class of heirs referred to in Class I of the Schedule, there is no reason to make distinction between the sons and daughters born to a Hindu before or after the date of his adoption. If any other approach was to be adopted, that in the first place, would amount to re-writing of the provisions and possibly result in discrimination on the touchstone of equals being treated unequally.

21. Section 4 of the Act provides for overriding effect of the Act, thereby, declaring that any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act. Clause (b) of Section 4 provides that the provisions of the Act shall override any other law in force immediately before the commencement of this Act and such law shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions of this

Act. There can be no doubt, therefore, that after coming into force of this Act, the parties will be governed by the provisions of this Act alone.

22. Section 6 of the Act as it stood before amendment of 2005 makes provision for devolution of interest in coparcenary property. The same reads thus:

> **"6. Devolution of interest in coparcenary property.-** When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:
>
> Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.
>
> Explanation 1.- For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim

partition or not.

Explanation 2.- Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

23. It is apposite to now refer to Section 8 of the Act, which deals with general rules of succession in the case of males, which reads thus:

"8. General rules of succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

. Clause (a) of Section 8 provides that in the first place, the heirs specified in Class-I of

the Schedule would succeed to the exclusion of other heirs. The steps of exclusion of heirs is referred to further in clauses (b) to (d). This position obtains on plain construction of Section 9 of the Act, which provides for the order of succession among heirs in the Schedule.

24. As is mentioned earlier, the definition of expression "heir" and "related" makes no distinction between the sons and daughters born to a Hindu prior or after the date of his adoption. Section 10 of the Act makes provision regarding distribution of the property among heirs in Class-I

of the Schedule in the manner provided therein. The same reads thus:

> **"10.Distribution of property among heirs in class I of the Schedule.-** The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:-
>
> Rule 1.- The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.
>
> Rule 2.- The surviving sons and daughters and the mother of the intestate shall each take one share.

> Rule 3.- The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.
>
> Rule 4.- The distribution of the share referred to in Rule 3-
>
> (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;
>
> (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

25. It is necessary to also refer to Section 19 of the Act, which deals with the mode of succession of two or more heirs, which reads thus:

> **"19. Mode of succession of two or more heirs.-** If two or more heirs succeed together to the property of an intestate, they shall take the property,-
>
> (a) save as otherwise expressly provided in this Act, *per capita* and not *per stripes*; and
>
> (b) as tenants-in-common and not as joint tenants."

26. If the argument of Kalindi (Appellants) were to be accepted, this Court, inevitably will

have to assume that the relationship of the sons and the daughter born to a Hindu (Laxman) from the same wife, before and after adoption as the case may be, were like the "agnate" and not related to each other by "full blood". That cannot be countenanced. In the present case, it is common ground that the father and mother are the common ancestors of the three sons born before the adoption and the daughter born after the adoption. Having regard to the Scheme of the provisions of the Hindu Succession Act as it stood at the relevant time, it made no difference to the rights of inheritance even if the sons were born before the date of adoption of Laxman. For, even the Schedule which refers to heirs in Class-I, merely mentions-son, daughter, widow, etc. If the Legislature in its wisdom, wanted to keep away or denude the son born to a Hindu before the date of his adoption from inheriting the property of the Hindu in his adoptive family, would surely have made an express provision in that behalf. In absence thereof, it will be inappropriate for this Court to attribute any such intention to the Legislature. On the other hand, on conjoint

reading of the relevant provisions, there can be not even a slightest of doubt that the Hindu Succession Act of 1956 intends to cover the sons and daughters born to a Hindu from the same wife before the date of his adoption or otherwise, to be entitled to inherit the property left behind by him in his adoptive family.

27. I have preferred to first consider the Scheme of the Act in the first place before adverting to the decisions which are pressed into service by the Counsel appearing for the Respondents (sons). Insofar as the decision of the Privy Council in the case of **Amarendra Man Singh Bhramarbar (supra)** is concerned, exposition in that decision has been quoted with approval by the Apex Court in the case of **V.T.S. Chandrashekhara Mudaliar (supra)**. It is well established by now, that the substitution of a son of the deceased for spiritual reasons is the essence of adoption and the consequent devolution of property is mere accessory to it. These decisions will not take us beyond the proposition expounded therein. The decision which perhaps would answer the point in

issue, as is rightly relied, is of the Single Judge of our High Court in the case of **Dundyappa Laxman Karol (supra)**. As only the gist of the decision has been reported in notes of cases, I thought it necessary to refer to the main Judgment, copy whereof has been made available to the Court. The Judgment is rendered in Appeal No.556/1964 decided on 26th November 1971. In that case, the Plaintiffs were the children born to a Hindu before he went in adoption. Their natural father Shivappa died on 17th March 1957 leaving behind his widow Gouravva, the natural mother of the Plaintiffs. After the death of Shivappa in his adoptive family, Gouravva - his widow, became the sole owner of the property including the properties in dispute. Shivappa had no issue after the date of his adoption. On 6th August 1957, Gouravva died, leaving behind the sons who were natural children born to her in her natural family. The Defendants were related to Shivappa, who contended that as the Plaintiffs were born to Shivappa before the date of his adoption, were not entitled to inherit the property left behind by Shivappa after his death in his adoptive family. This controversy has been

considered and answered in the affirmative in favour of the Plaintiffs. In the present case, the only difference is that the Defendant Kalindi happens to be the daughter born to Laxman and Padmavati after adoption. In that sense, she is the real sister of sons born to Laxman and Padmavati before adoption. The children have common ancestor as Laxman and Padmavati.

28. Be that as it may, in the case of **Dundyappa Laxman Karol (supra)**, before considering the controversy, the Court made it amply clear that it was not examining any issue concerning the right of the children in their natural family but the consideration was limited to whether the Plaintiffs could succeed to the properties of their father left behind by him after his death in his adoptive family. The Court in Para 13 and 14 went on to observe as follows :

> "13. The expression "son" or "daughter" does not appear to have been defined in the Act. In his judgment the learned District Judge has referred to section 3(j) of the Hindu Succession Act, 1956. Under that definition even illegitimate

children would be deemed to be related to their mother, though the word 'related' would otherwise mean related by legitimate kinship. This definition would seem to suggest that as far as the property of a female Hindu is concerned, even her illegitimate children would be entitled to inherit. If the expression "son or daughter" contained in entry (a) in sub-section (1) of section 15 is to include illegitimate children, the question arises whether it would be proper to exclude the legitimate children born to a woman prior to the date of her husband's adoption?

14. It was urged by Mr.Hombalkar that when the wife passes into the adoptive family along with her husband who is adopted, she also severs all her ties with the natural family of her husband; and that being so, she severs her ties with her natural children born in the natural family prior to the date of the adoption. It is true that under the Hindu Law the wife like the husband would sever her ties along with her husband; but this would mean only that she like her husband would not be entitled to inherit the property in his natural family. In my opinion, the fictional severance of ties with the natural family would not mean that her children would cease to be her children or can be considered to be not her children by means of a legal fiction. If by virtue of the definition in section 3(j) even the illegitimate children of a Hindu female have been given a right to inherit her property, then it would not be permissible to say that her legitimate children should be excluded because they were born to her prior to the date of her husband's adoption. If, however, the Legislature had specifically provided for this, then effect must be given to such a provision and the wishes of the Legislature respected. Where, however, there is no

> such clear provision, such exclusion would appear to be against the plain language of the enactment and it would not be proper to come to any such conclusion."
>
> (emphasis supplied)

. In Paragraphs 15 to 18, the Court then considered the reported decisions pressed into service in the case of **Tewari Raghuraj Chandra & Ors. v. Rani Subhadra Kunwar & Ors.-AIR 1928 PC 87, Dattatraya Sakharam v. Govind Sambhaji-18 Bom.L.R. 258, Sharadchandra @ Ambadas s/o Krishnarao Deshpande v. Shantabai w/o Sadashivrao & Anr.-AIR 1944 Nagpur 266 (Full Bench), Mt.Murti Gaolin v. Ram Briksha Gope & Ors.-AIR 1959 Patna 446 and Mallappa Fakirappa Sanna Nagashetti & Ors. v.Shivappa & Anr.-AIR 1962 Mysore 140**. While considering the Full Bench Judgment of the Nagpur High Court in **Sharadchandra's case (supra)**, the Single Judge of this Court has observed in Para 16 that the same decision proceeds on a very limited point as to the capacity of a mother to serve in a dual capacity and would seem to have no bearing on the point under consideration. The Single Judge has approved the view taken by the District Judge which had held that the expression son and daughter

used in entry (a) in Section 15(1) of the Hindu Succession Act, 1956 means legitimate, illegitimate or adopted son or daughter. The learned Judge has upheld the further view taken by the District Judge that whether her legitimate son or daughter has born to her in the natural family of her husband or in his adoptive family, would make no difference, as the correct view. On that reasoning, the question raised in the Appeal has been answered in favour of the Plaintiff. To get over this decision, Counsel for Kalindi would submit that in that case, the Plaintiff claimed right in respect of the property inherited by the mother after death of Shivappa. That cannot be the basis to distinguish the Judgment and moreso, the statement of law expounded in the case of **Dundyappa (supra)** with reference to the provisions and the scheme of the Hindu Succession Act.

29. If any other authority that needs to be referred to and rightly pressed on behalf of the Plaintiffs - sons of deceased Laxman is the case of **Neelawwa (supra)** decided by the Division Bench of the Karnataka High Court. Once again, in this

case, the Plaintiff asserted that she was the daughter of late Mallappa for which reason, she was entitled to inherit the suit property of deceased Mallappa. The Defendant on the other hand, the step-mother of the Plaintiff, contended that the Plaintiff was born to Mallappa prior to the date of adoption of Mallappa, for which reason, she did not belong to the adoptive family. This objection has been negatived and the Court went on to hold that the Plaintiff was also entitled to inherit the property left behind by Mallappa though begotten prior to the date of adoption. This is the only legal question considered in this Judgment and moreso with reference to the provisions of Hindu Succession Act. The Court went on to observe that the fact that the deceased Mallappa had come to own and possess the suit land by reason of his adoption did not make any difference for the purpose of Section 8 of the Act as it was the property of Mallappa at the time of his death. It then observed that the expression "heir" and "related" are also defined in Section 3(f) and 3(j) of the Act. The Plaintiff in that case being a legitimate daughter of deceased Mallappa born through his

first wife, the Court accepted her claim even though restating the legal position that adoption had the effect of removing Mallappa from his natural family into the adoptive family. It went on to observe that, adoption did not and could not sever the tie of blood relationship between him and the Plaintiff. The Court therefore accepted the claim of the Plaintiff irrespective of the adoption of her father, as she continued to be the daughter of Mallappa on the relevant date and being one of the heir specified in Class-I of the Schedule to the Act, became entitled to inherit the property left behind by Mallappa after his death in the adoptive family.

30. There is yet another authority on the point which falls for our consideration. More or less in similar situation, the Division Bench of our High Court in **Kausalyabai's case (supra)** considered the efficacy of the provisions of the Hindu Succession Act. In that case, one Abaji was the natural son of Anandrao who gave him in adoption on 2nd April 1924 to Jamunabai widow of Jaiwantrao Deshmukh. Abaji had four wives. He

married Plaintiff Devkabai after adoption. Dravpadabai was mother of Defendant Kausalyabai who was born before adoption of Abaji. Abaji died in the night between 10th and 11th October 1965 leaving the Plaintiff. Devkabai, her co-widow Jankabai who also died on 15th September 1966 and daughter Kausalyabai born before adoption. In this background, the question that came up for consideration was even if the Defendant was born before adoption of her father she must be considered to have passed along with her mother into the adoptive family of the deceased Abaji and succeeded to inherit the properties left behind by Abaji after his death in the adoptive family. The Division Bench has referred to both the Full Bench decisions of our High Court of **Martand Jiwaji Patil (supra)** as well as of Nagpur High Court in the case of **Sharadchandra (supra)**. It has noted that both these Full Court decisions concerned the status of a son, however, that was not in issue. In the fact situation of that case, the Court was called upon to consider the rights of daughter who was hardly an year old and who had no right, title or interest whatsoever in the genitive family at the time when

her father was adopted. After having adverted to these aspects, in Para 33, the Court while considering the argument of the opposite party that the daughter would cease to be the daughter of her father because of his adoption, repelled the same on the reasoning that there was no text of any Dharmashastra, which lays down that a daughter ceases to be a daughter the moment his father is given in adoption. In Para 34, the Court went on to observe that the blood relation of the daughter and the father continued till the Hindu Succession Act came into force and hence, the daughter was entitled to share in the suit lands.

31. Indeed, in that case, the Court was called upon to consider the claim of the daughter born prior to the date of adoption of the father. That, however, will make no difference to the legal position. Even in the case of a son born prior to the date of adoption, there is no text of any Dharmashastra, at least brought to my notice, which expounds that the son ceases to be a son or the blood relationship between him and his father would cease after the father is given in adoption.

Besides, as mentioned earlier, the matter will now have to considered on the touchstone of the provisions of the Hindu Succession Act of 1956. Section 4 of the said Act has overriding effect on any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force and that will cease to have effect with respect to any matter for which provision is made in the Act of 1956 immediately before the commencement of this Act. There is clear provision made with regard to devolution of interest and succession in the case of males and the order of succession and distribution of property amongst heirs in the Schedule. The Schedule specifies the heirs in Class-I. That makes no distinction insofar as the son born before the date of adoption of his father or thereafter.

32. Viewed from any perspective, the claim of Kalindi (Appellants) that her real brothers born to Laxman and Padmavati before the date of adoption of Laxman will have no right of inheritance in the property left behind by their father, is unacceptable.

33. Accordingly, the Appeal preferred by Kalindi (Appellants) should fail.

34. No other contention has been raised before this Court, for which reason it is unnecessary to advert to other issues tried and decided by the Trial Court. As the legal question has been answered against Kalindi, it necessarily follows that her brothers Gangadhar, Dattatraya and Manohar have also inherited the property left behind by Laxman in his adoptive family. Thus, being owners, their names ought to be notified in the Village records. The mutation entry recorded by the Revenue authority being ME No.4702 therefore will have to be suitably modified to incorporate the names of Gangadhar, Dattatraya and Manohar and persons claiming through them as owners of the suit property, having shares as declared by the Trial Court, which decree is confirmed by this Judgment.

35. Accordingly, the Appeal is dismissed. The impugned Judgment and decree is upheld.

36. The Writ Petition succeeds. The orders passed by the Revenue Authorities are set-aside with direction to the First Revenue Authority to make necessary amends to the mutation entry No.4702 commensurate with the decree passed by the Trial Court as confirmed by this Judgment. The parties shall bear their own costs of the proceedings.

A.M.KHANWILKAR, J.